


EXHIBIT B

From: Hassid, Alex alex.hassid@blankrome.com 
Subject: RE: DOS docs due today
Date: November 1, 2022 at 5:05 PM
To: Brennan, Nathan nbrennan@ashcroftlawfirm.com, Tasha Blakney tblakney@eblaw.us
Cc: West, Kim KWest@ashcroftlawfirm.com, Sullivan, Mike msullivan@ashcroftlawfirm.com

AH

Nate,

Thanks for reaching out. My apologies for not responding sooner—it has been a busy day.

1. In answer to your first question, our client advised DOS of the Court's order on October 19, including transmitting a copy of the order and the so-ordered stipulated protective order.
2. As to your second question, your recitation is a little off. What happened was that a DOS attorney responded to our client late on Friday, October 21 with a request for additional information and indicating that he anticipated responding the following week (i.e., the week of 10/24) subject to receiving answers to his questions. We provided those answers on 10/25, so based on his original statement, we have been anticipating a DOS response this week. We did not hear back from DOS today, although we plan to contact the DOS attorney tomorrow to request an update.

We're happy to follow up with you after we speak with the DOS attorney, and either way, we think it would be prudent for the parties to confer to discuss next steps.

Best,
Alex

Alex Hassid

BLANKROME

O: (212) 885-5268 | **C:** (516) 698-4019 | ALEX.HASSID@BLANKROME.COM

From: Brennan, Nathan <nbrennan@ashcroftlawfirm.com>

Sent: Tuesday, November 1, 2022 2:33 PM

To: Tasha Blakney <tblakney@eblaw.us>; Hassid, Alex <alex.hassid@blankrome.com>

Cc: West, Kim <KWest@ashcroftlawfirm.com>; Sullivan, Mike
<msullivan@ashcroftlawfirm.com>

Subject: Re: DOS docs due today

Tasha and Alex,

Thanks for making time to confer by phone yesterday. We had two follow-up questions from our conversation.

First, Alex indicated that DOS was advised of the Court's August 26 Order as some point in October, but would need to check records as to the exact date. Can you confirm the date in October that DOS was advised the Court's August 26 ruling?

Second, we understand that a DOS attorney indicated you would hear back within one week of your Tuesday, October 25 response to DOS's questions. As of yesterday you had not heard back from DOS. Have you heard anything from DOS today?

Thanks again,
Nate

Nate Brennan
Of Counsel

Ashcroft Law Firm

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> On Oct 30, 2022, at 7:44 PM, West, Kim <KWest@ashcroftlawfirm.com> wrote:

>

> Thanks, Alex.

>

> Let's plan for 4:00 on Monday. We will send a line.

>

> Kim

>

> Sent from my iPhone

>

>

> Kim West

>

>

> Ashcroft Sullivan LLC

> P: (617) 573-9400 |

> KWest@ashcroftlawfirm.com | www.ashcroftlawfirm.com

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>> On Oct 30, 2022, at 9:14 AM, Hassid, Alex <alex.hassid@blankrome.com> wrote:

>>

>>

>> Good morning, Kim,

>>

>> While we disagree with much of what you've written, it may be more straightforward to discuss during the meet and confer you've requested. Tasha and I have prior engagements throughout much of Monday and Tuesday but are available to confer after 4:00 PM either day. Please let us know when you would prefer.

>>

>> Best,

>> Alex

>>

>> Alex Hassid

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>>

>> From: West, Kim <KWest@ashcroftlawfirm.com>

>> Sent: Friday, October 28, 2022 9:54 PM

>> To: Hassid, Alex <alex.hassid@blankrome.com>; Tasha Blakney <tblakney@eblaw.us>

>> Cc: Brennan, Nathan <nbrennan@ashcroftlawfirm.com>; Sullivan, Mike

<msullivan@ashcroftlawfirm.com>

>> Subject: RE: DOS docs due today

>>

>> Dear Alex,

>>

>> The issue is not the narrowing and purportedly voluminous document review process that resulted in today's production date, which we mutually agreed-upon on October 12. Today's stipulated production date was predicated on allowing sufficient time to complete the review process.

>>

>> The issue is your clients' failure to abide by the timetable set by Judge McCook's August 26 Order granting RSLs's motion to compel and finding "thirty (30) days from entry of the protective order sufficient time to advise the DOS of the Court's ruling and for the DOS to be heard on any documents Defendants identify for production." (ECF No. 65 at 15 fn. 7).

>>

>> The Protective Order was entered on September 9, (ECF No. 70), and the 30-day period thereafter ended October 10.

>>

>> Yet, yesterday, October 27, we learned that only last week a lawyer for DOS reached out to your clients via email and asked for a copy of the Court's August 26 Order to produce DOS documents.

>>

>> Now today your email informs us on the production due date that "Defendants cannot produce today because DoS is presently reviewing the order and related documents, and whether DoS will allow Defendants to produce the documents at issue."

>>

>> It appears that DOS was not timely advised of the Court's Order and is unaware that the window for DOS to be heard closed on Oct 10 — 30 days from entry of the protective order on Sep 9. DOS was not even provided a copy of the order until last week, well after it should have raised any objections with the Court.

>>

>> RSLs never agreed to delay the timetable set by Judge McCook's Order for DOS to be advised and heard. Instead your clients appear to have unilaterally granted themselves an extension of their obligations to advise DOS, in disregard of Judge McCook's instructions. See Aug 26 Order at 15 fn 7 ("To the extent thirty (30) days is insufficient, Defendants may seek leave for additional time but must meet and confer with Plaintiff prior to seeking an extension").

>>

>> Finally, to the extent Defendants believe they must be "allowed" by DOS to comply with their Court-ordered discovery obligations, such a position is not consistent with the determinations made in the Court's August 26 Order.

>>

>> Please advise of your availability on Monday to confer in regard to Defendants' overdue production.

>>

>> Best regards,

>>

>> Kim

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>> Kim West

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>>
>> Ashcroft Sullivan LLC
>> P: (617) 573-9400 |
>> KWest@ashcroftlawfirm.com | www.ashcroftlawfirm.com
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>> From: Hassid, Alex <alex.hassid@blankrome.com>
>> Sent: Friday, October 28, 2022 4:36 PM
>> To: West, Kim <KWest@ashcroftlawfirm.com>; Tasha Blakney <tblakney@eblaw.us>
>> Cc: Brennan, Nathan <nbrennan@ashcroftlawfirm.com>; Sullivan, Mike <msullivan@ashcroftlawfirm.com>
>> Subject: RE: DOS docs due today
>>
>> Kim,
>>
>> Tasha is indeed tied up so I am responding to your email. We understand full well Judge McCook's order concerning our production and our separate agreement to extend that deadline based on the parties' efforts to narrow the scope of the requests at issue. With respect to Judge McCook's order, it explicitly acknowledged that DoS might need to be heard before the Defendants make their production, and that extending the production deadline might be necessary in that event. Here, as I understand Tasha explained to you, DoS contacted our client to indicate the issue of our production is undergoing legal review by the agency and that an answer would be forthcoming. If Defendants produce documents before DoS determines how it will proceed, we could moot DoS's effort to challenge production and protect its documents. That is plainly not what Judge McCook intended.
>>
>> In answer to your question, Defendants cannot produce today because DoS is presently reviewing the order and related documents, and whether DoS will allow Defendants to produce the documents at issue. If it does not, then we agree that DoS will need to make an application to the Court to address the issue. In the interim, I understood based on your phone call with Tasha that you proposed a joint submission to alert the Court to what is going on, and that you had asked us to respond this afternoon as to whether we would join. I'm not sure what changed since you spoke to her, but our response would have been to suggest that we give DoS a few more days to sort through this issue. We have no objection conceptually to jointly filing a status update with the Court but think it is in the parties' best interests to wait until at least the middle of next week before doing so. We are concerned that challenging DoS now or trying to force it to respond before it is ready could be perceived as antagonistic, and potentially counter-productive.
>>
>> If you would like to discuss, please feel free to call me. Thank you.
>>
>> Best,
>> Alex
>>
>> Alex Hassid
>> BLANKROME
>> O: (212) 885-5268 | C: (516) 698-4019 | ALEX.HASSID@BLANKROME.COM
>>
>> From: West, Kim <KWest@ashcroftlawfirm.com>
>> Sent: Friday, October 28, 2022 2:41 PM
>> To: Tasha Blakney <tblakney@eblaw.us>; Hassid, Alex <alex.hassid@blankrome.com>
>> Cc: Brennan, Nathan <nbrennan@ashcroftlawfirm.com>; Sullivan, Mike <msullivan@ashcroftlawfirm.com>
>> Subject: DOS docs due today

>>
>> Dear Tasha,
>>
>> Thank you for your call last evening. I understand that last week, a lawyer for DOS reached out to your client via email and asked for a copy of the court's order to produce DOS documents. The lawyer indicated that he/she would get back to your client ASAP. The lawyer also indicated that the matter is currently being reviewed and had already been reviewed by the programs office.
>>
>> Pursuant to my call to you this morning, I understand that your client reached out to the DOS lawyer this morning via email and received a response indicating that the matter was still under review.
>>
>> Per our agreement, the DOS documents are to be produced today. While I appreciate your apprising us of the communications between your client and DOS, they do not change your clients' Court-ordered production obligations under our agreement. Please let me know by 5:00 p.m. if you will produce the documents today.
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>> Tasha, I know you are busy this afternoon. Alex, I hope you might be able to respond to let us know.
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>>
>> Best regards,
>>
>> Kim
>> Kim West
>>
>>
>> Ashcroft Sullivan LLC
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>> KWest@ashcroftlawfirm.com | www.ashcroftlawfirm.com
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